IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE
SECOND APPEAL NO. 465 OF 1997

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. Pawaskar h/f Mr. S.M. Gorwadkar and Mr. A.P. Mundargi. for the appellant.

Mr. Madhav Jamdar for respondent.

CORAM : ANOOP V. MOHTA, J.

DATE : 16.12.2005

. Heard. The Respondent-husband has prayed for decree of divorce on the ground of cruelty and desertion. After considering the evidence and material placed on the record, the trial Court by an order dated 4th February, 1990 allowed the petition on the ground of desertion, as contemplated under section 13(i)(b)) of the Hindu Marriage Act and that marriage between the appellant-petitioner and the respondent stand dissolved from the date of order.

2. The respondent wife therefore preferred the appeal before the 3rd Additional District Judge, Raigad. The Appellate Court, after considering the material on the record confirmed the finding arrived by the trial Court by order dated 29/1/1997.

3. The appellant therefore, has preferred the present second appeal and challenged the order of grant of divorce. The appeal was admitted on 6/3/1998 on questions II and III. These grounds are;

"I. Wether both the Courts below justified in passing a decree for divorce on the ground of dissolution by Appellant/Wife, when admittedly there was no pleading in the Divorce Petition to that effect?

III. Whether both the Courts below were justified in considering the evidence

alone to come to the conclusion that wife was guilty or deserting her husband without any reasonable cause, when admittedly no case to that effect as pleaded by the Petitioner-husband?

After considering the rival contention between the parties in the matrimonial dispute admittedly, the trial Court has granted a decree for divorce on the ground of desertion on 4th February, 1990 and since then the said order remained in tact. The learned Counsel tried to settle the matter but in vain.

4. It is therefore, since the date of decree of divorce the husband and wife are residing separately and they are not ready and willing to live together. The learned Counsel submitted that they have also no instructions in spite of repeated reminders.

5. Even otherwise, considering the

questions of law, as raised, in my view the reasoning given by the Courts below appears to be correct, based on the material available on the record. There is no perversity as such, which need interference in this matter. The concurrent findings based on the assessment of evidence and material on the record, I see there is no reason to interfere with the views taken by both the Courts below. Merely because another view is possible in such matters, that cannot be the reason to interfere.

6. However, as it is a matrimonial matter, dispute between the husband and wife, they are always free to settle the matter amicably even, there is confirmed decree passed by the Court. A settlement between the parties in matrimonial matters in no way can be prevented by the judgment and order passed by the Court. Hence, both the questions of laws as framed are answered in affirmative.

Second Appeal is disposed of accordingly.

(ANOOP V.MOHTA,J.]